PRESIDENT: I see that 20 are for, 20 against and 21 are neutral. The rule in these cases is that the President shall preserve the status quo. Therefore I vote against leave to introduce the Bill.

THE TRAVANCORE THATCHAR BILL.

MR. VARKALA K. MADHAVAN (*Neyyattinkara cum Trivandrum*): Sir, I beg leave to introduce the Travancore Thatchar Bill before this Assembly.

MR. P. K. KURIAKOSE: Sir, I second it.

The Motion was put and carried.

THE TRAVANCORE NADAR BILL.

MR. S. THIRAVIAM NADAR: Sir, I beg leave to introduce the Travancore Nadar Bill before this Assembly.

MR. A. NESAMONY: Sir, I oppose the measure.

MR. S. THIRAVIAM NADAR: Sir, the Nadar community is the third largest Hindu community in Travancore. On a study of the case law relating to the Nadars, I find that there are a series of customs at variance with Hindu law. It is ordinarily said that the Hidnu Mitakshara Law applies to the Nadars of Travancore. But there are various local customs and usages set up at different places against the general trend of Hindu Law. So, rather than leaving this state of affairs as it is, I desire to codify definitely and clearly the law for the Nadars of Travancore. Whether this community requires a special law may be one of the contentions on the opposition side. My answer is that there are a series of enactments for the communities which have only a very nominal population in Travancore. The test whether a section of the people or a particular community requires legislation is not conditioned on the number of the people alone but it depends on whether there is any definite and clear law governing that particular section or community. So far as I can see, I find there is indefiniteness and ambiguity regarding certain principles of law that are applicable to the Nadars, the details of which I do not like to enter into at this stage. The next question I would like to deal is with regard to the latest law report on the subject which is found in 1944 T. L. R. The Christian Succession Act left certain points uncleared and the latest ruling in the T. L. R. referred to has cleared the matter to some extent. So I wanted to put the matter in the form of a Statute basing my principles on the case law reported in T. L. R. In other respects also I think this Bill proposes certain provisions on the lines of the Draft Hindu code that has been published by the Hindu Law Committee in British India. These principles are in consonance with the changed conditions and circumstances of the present day world. So both on principle and expediency this legislation is quite essential for the Nadars of Travancore.

MR. A. NESAMONY: Sir, the rules require that I should be very brief in my remarks, and I will try to be brief, but you will pardon me if I take a few minutes more than the allotted time, in view of the importance of the motion before the House.

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Sir, the bill, for which the leave of the House is asked for, is an ill conceived piece of legislation. The objects and the reasons as stated by the mover would go to show that he wants to codify the case law as reported in 1944 T. L. R. 595. What did it determine and what is the law that my friend now wants to get this Assembly to refer to a Select Committee are the questions now before the House. I am so sorry that the number of Nadars in this Assembly is limited, the number being 3 Christian Nadars against one nominated Hindu Nadar. It may be of interest to the members of this Assembly to know that the Nadar community was governed by the Mitakshara Law from time immemorial and, till the passing of the Christian Succession Act, the Nadar converts were governed by the Mitakshara Law itself. The question has not been set at rest whether the Christian Succession Act governs the Nadar Christians only in the matter of intestate succession or whether it is a self contained Act. The contention so far as the Christian Nadars are concerned is that it is not a self contained Act. This honourable House by passing the Christian Guardianship Act has demonstrated that it is not a self contained Act. In matters of alienation, debts and other instances of Hindu law we claim to be governed by the principles of Hindu Law. Even now, there is ample evidence in the reported cases of the High Court especially in a case reported in 30 T. L. J. 90 that the system of joint families continues even after the promulgation of the Christian Succession Act. So, it is now idle to contend that the 1944 T. L. R. ruling has evidently sealed the fate of the Christian convert for ever and that he cannot look back to the old Hindu law and say that here is the law under which I am governed. That is the law which the mover wants to codify in spite of the fact that the Hindu law is applicable to the Nadars—Christian and Hindu.

I shall just refer to one particular passage in the judgment of the Chief Justice in 1944 T. L. R. 595 at 601 to show the basis of the ruling upon which that was founded and compare it with the principles underlying the new legislation.

> "One cannot overlook the fact that the Hindu Law of the Smritis is deeply overlaid with a philosophy of its own and that that system of law was intended to be in one sense a handmaid to the spiritual realisation that was set up as the very object of life and activity."

Now one seeks in vain among the provisions of this Act the deeply overlain philosophy of Hinduism and Hindu usage to discover whether they lie hidden among the provisions of this Act. Marriage according to Hindu law is a holy union for the performance of religious duties. It is not a contract. It is an indissoluble tie and it is of the essence of Hinduism that marriage is looked upon as a sacrament. It is the last of the 10 sacraments enjoined by the Hindu religion for purifying the body from inherited taint. That is the acknowledged principle of Hinduism. Such is the importance of marriage under Hindu law. My friend has forgotten the Hindu philosophy and Hinduism and the sanctity of marriage and the bearing it has on Hinduism and says that marriage is a contract dissoluble at the whims

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[Mr. A. Nesamony.]

and fancies as it were of profligate youths who waste their time and substance in cinemas and restaurants thinking that it contributes to all their happiness. Now, Sir, the females of the Hindu Nadar Community when compared with the females of other communities are backward in education. The Census would show that. Now, it is to such women that we are going to say, "you will be divorced at the whims and fancies of profligate youths for the reasons that are mentioned in the Act". What I say is that the fundamental principles of Hinduism have been lost sight of in the attempt at granting divorce.

Secondly, the joint family system with the right of survivorship is the cornerstone of Hindu society. But that incident of Hindu law has been thrown aboard by Section 20 of the Bill. The pious obligation of the son to discharge the debts of the father, and his right to ancestral property by birth have been thrown to the winds. The mover of the bill now says that no man shall have any right to the property of his ancestor by reason of birth. I ask the mover in all seriousness whether his knowledge of Hinduism, Hindu philosophy and culture is being manifested in the drafting of the Bill. It is a debatable point Sir. In British India we read every day, of the father upholding the joint family system and the son opposing it. We have an instance in the Advocate General of Bombay. Whether divorce should be granted to Hindus is another debatable point which is agitating the minds of many Hindus. The Rao Committee is gathering evidence on all these matters. Eminent lawyers have confessed their inability to codify Hindu law. There is strong opposition from all parts of India against the move to codify Hindu law.

My honourable friend has now introduced this Bill without considering what will be the effect of this Bill on his own kith and kin in British India. The Nadars living in the southern part of India especially in the Districts of Tinnevelly, Ramnad and Madura where they are so powerful. The Nadars living on the other side of the hills do not want a legislation on the lines indicated in this Bill. Nor are they agitating for it. I submit that it will be ruinous for the Nadar community to be secluded among themselves and between the seas and the ghats and to be content with what is going on here and never look up to their kith and kin beyond the hills. So, it is a suicidal policy to contemplate legislation for Nadars at this stage.

Now, I shall pass on to the next point which virtually affects the prestige of this State and which goes to affect the religious toleration which we enjoy in abundance at the hands of successive benevolent soverigns. Section 24 of the Bill cuts at the root of all religious freedom and toleration. While conversion does not cause degradation from caste in this community there is no reason why I should lose my right to my ancestral property. This House has enacted the Hindu Inheritance (Removal of Disabilities) Act under which the deaf, the dumb, the leper and the insane have been granted rights of inheritance. Now I ask Sir, whether the Christian convert is worse

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than the leper and the insane in his ancestral home? Has his ancestral home become worse than a leper asylum or a mental hospital simply because of his having become a Christian? I beg to submit Sir, that the same lenient treatment, the same rights offered to the leper and the insane in his own home might with advantage be given to the convert in his original family. That right should not be denied to him. Again under the provisions of the Special Marriage Act, if a Brahmin marries a Pariah, he does not lose his rights in the family property. He loses only his right of residence in his ancestral home. Is conversion worse than such consortium? But, here is a Bill by which if I become a Christian I am to lose every right. Here is an Act by which if I become a Christian I am to be driven off from my home. Is this the Act under which we are going to be governed? Is it intended to prevent Nadars from becoming Christians? Speaking from my personal experience I say that my sister has married a Protestant Christian, my brother-in-law's brother has married a Hindu, my sister's father-in-law's brother is the *Mudutha*n of the nearest Catholic church. But still all live in the same house, under the same roof, enjoying the properties jointly. It makes no difference whether one has married a Catholic, another a Hindu and still another a Protestant. That is the peculiar nature of our community and it is that, that I want the honourable members of this House to safeguard. I request honourable members must think deeply before giving the mover leave to introduce this Bill which goes fundamentally to the root of the existence of our community itself. These are things which honourable members will have to seriously consider before they decide to raise their hands. I am glad that by a ruling of the Chair, the Official members are directed to remain neutral. I am equally glad that there is only one Nadar Christian among the official block who will not take part in the voting. I notice that there are two Nadar Christians among the Non-official members. I request the honourable members not to be carried away by any party politics.

PRESIDENT ; This is a social legislation and therefore the Government members unless they ask for special permission to express their individual opinion, Government members as such will exercise strict neutrality.

MR. A. NESAMONY : I will just read a passage from 1944 TLR 595 at 609 from the dissenting judgment of Justice Abraham.

> "Conversion to Christianity entailed no degradation from caste and the caste men and the converts interdinned together and held social communion as of old. Funeral rites of the deceased Hindu father were performed by the Christian sons, and in the community such rites could be so performed. Rights of inheritance and succession and rights of management were not affected by conversion. The family continued as such, both the convert and the non-convert being free to live together in the same social atmosphere as before. It may be said to the credit of the Nadar community that they had in their native humanity at once freed themselves from the shackles of caste law and had outgrown the narrow exclusiveness and selfish prejudices which encumber society. In fact this community worked out a Lex Loci Act (21 of 1850 in British India) of its own through the usage which they consciously established and was found to be binding upon the Courts."

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[Mr. A. Nesamony.]

With your permission Sir, I will just refer to another passage which will make matters clear to the honourable members. And that is a passage from the judgment of Justice Hunt reported in 22 T. L. R. 246 at 249.

> "I would further hold that, by custom among Shanars," (It is only lately that they are known by the name of Nadars.) "conversion does not deprive the convert of his rights to inherit a share in his family properties nor deprives him of his right to management. I agree with Mr. Justice Arianayagom Pillai's observation in 4 T. L. R. 17, that Act 21 of 1850 might with advantage be adopted in our Statute book. As the enactment contains but one section, it might very readily be put into operation. Seventeen years have passed since the suggestion was first made and I think the educated masses in Travancore ought by this time to be prepared to take a more liberal view of a man's change of religion. Freedom of thought and religious toleration are as necessary to national well-being as personal liberty. It is not of much use for men to think if they are to be frightened from giving effect to their thoughts. Responsibility, as Lord Dalhousie once said, is the test of courage. If the people have not the necessary stamina, let the Government help them, by removing their disabilities."

MR. A. K. BHASKER (*Quilon* cum *Kottarakara*): Is the existing law governing the Christian Nadars and Hindu Nadars the same?

MR. A. NESAMONY: Yes.

It is only 27 years since the Christian Succession Act has been passed. But from antiquity we, the Christian Nadars have been following our own customs in derogation of Hindu law. Religious toleration has been the watch-word of the Rulers of Travancore from time immemorial. The soverigns were tolerant and courts recognised as law, custom in derogation of law.

Sir, *Stare decisis* is the foundation stone of all jurisprudence. But this foundation is now shaken. We have now reached a stage when those dispensers of justice sitting under the shade of the wooden pannels of the High Court with the motto "Fiat Justitia Ruat Coelum" engraved on them make us exclaim, "the heavens are falling, save us from these legal prodigies". It is now 150 years since the influence of Christianity has begun to exert in South Travancore. Conversion has been going on in Travancore for the past 150 years and the converted Nadars have been following Hindu law as modified by custom. This was upheld by the High Court which held that among Nadars, conversion does not work a forfeiture of his civil rights in his family. The reason being that the Nadars were outside the pale of Hinduism and that among them conversion caused no degradation of caste. Justice Sadasiva Iyer has conceded that in his judgment in the 22 T. L. R. case. He quotes the opinion of Dewan Mr. Sankarasubbiar, that the low orders of Hindu society have no recognized status and lose nothing by change of faith.

I was outside the pale of Hinduism. I was a *mlecha*, a *chandala*. Conversion never caused degradation of caste in me. I ask for the administration of that law recognized by our High Court, the law

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that gave me freedom to inherit irrespective of my religion and the law in force till the 1944 T. L. R. ruling. This bill does not grant the freedom of inheritance which Christian converts were enjoying for the past so many years. There is no reason why this Bill should set at naught the decisions of our honourable High Court.

I had sent up an interpellation on the subject of removal of caste disabilities. Though it is in the admitted list of questions, I am sorry it has not been answered. I submit that the fitting reply to this Bill is a resolution of this Assembly on the floor of this House requesting the Government to introduce the Caste Disabilities Removal Act (Act XXI of 1850) of British India. That will be a fitting answer in consonance with the agelong tolerant policy of the royal family which had granted freedom of religion and expression to all and sundry, in consonance with advance in education and culture which this State is proud of and in consonance with justice and freedom. But if on the other hand, a Bill of this sort is going to be thrust upon us, we would be guilty of divide and rule, splitting the community into different sections. We would be laughed at by all progressive elements. We would be objects of ridicule in the eyes of all civilized people. So, I request honourable members not to allow this Bill to go through. Vote it down at this stage and thus refuse leave to introduce it. The motion to introduce the Bill was put to vote and lost.

MOTION RE: FOOD SITUATION.

MR. P. S. NATARAJA PILLAI: Sir, I move that the food situation in the country be considered. In view of the statement made by the Dewan President the other day I do not wish to make a speech on the subject. I merely move it for the consideration of the House.

PRESIDENT: I shall see that this subject gets a first place in the agenda when the House assembles next time.

The House will now adjourn *sine die*.

The House adjourned at 6-10 P. M.

S. VAIDYANATHA AIYER,
Secretary to the Sri Mulam Assembly.

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